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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Seventh periodic reports of States parties due in 1991

Addendum

LUXEMBOURG*

[8 April 1993]

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* This report contains the sixth and seventh periodic reports of Luxembourg, due on 1 June 1989 and 1 June 1991 respectively:

Fourth periodic report - CERD/C/128/Add.2 (CERD/C/SR.790);
Fifth periodic report - CERD/C/155/Add.2 (CERD/C/SR.846).

PART I. GENERAL

Situation in respect of immigration

1. Before outlining the Government's approach to the elimination of all forms of racial discrimination, a brief description of the situation may be useful as regards immigration.

2. Luxembourg is a country of paradox, at least as regards its demographic make-up. Luxembourg associates a low mortality rate with an exceptionally low fertility rate and exceptionally high immigration. This demographic pattern, which has persisted for several decades, has led to the present situation in which the proportion of foreigners among the total population and the proportion of elderly persons within the national population are the highest ever recorded in European countries. 1/ The following statistics should be considered against this background.

Population

Population censuses	1971	1981	1991	1992
		(Thousands)		
Total population	339.8	364.6	384.4	389.8
Female population	173.3	186.7	196.1	198.5
Luxemburgers	277.3	268.8	274.4	275.1
Aliens	62.5	95.8	110.0	114.7
Aliens (as percentage)	18.4	26.3	28.6	29.4
including: Belgians	6.5	7.9	9.5	9.7
Dutch	2.5	2.9	...	...
French	8.5	11.9	13.0	13.1
Germans	7.8	8.9	8.7	8.8
Italians	23.4	22.3	19.9	19.8
Portuguese	5.8	29.3	37.6	40.4
Spaniards	2.2	2.1	...	...
United States citizens	0.7	0.7	...	...

3. These aliens essentially share the same culture and most of them speak French more or less well; French is one of the three languages spoken in Luxembourg, together with German and the Luxembourg language which is the language in everyday use.

4. Since the expansion of the Community, Europeans constitute the bulk of migrants and their status is defined by EEC regulations.

5. In view of developments in Community policy and Luxembourg's present economic situation a fall in immigration is unlikely.

1/ See: Gérard Calot, La demographie du Luxembourg, passé, présent et avenir, Luxembourg, 1978, p. 3.

6. The demographic prospects described by Professor Gérard Calot in his report to the Government in early 1989 confirm this trend. According to Mr. Calot and Mr. Chesnais, "immigration has become an essential component of Luxembourg's demographic regime; it has become the principal, indeed the sole, component of Luxembourg's demographic vitality."

7. The activities of racist or xenophobic groups are on a very small scale and their influence negligible. During the legislative elections of 18 June 1989, groups of this kind put forward a list of candidates which did very badly. No one on the list was elected to the Chamber of Deputies.

8. In the European elections held the same day the National Movement list received only 2.91 per cent of votes, demonstrating that the number of supporters is negligible.

Legislative provisions and regulations

9. Since the fifth periodic report, a number of legislative provisions or regulations have been added to the list of instruments guaranteeing effective protection for human rights and fundamental freedoms in the Grand Duchy of Luxembourg. The list is long and worth examining.

10. First of all, although the Constitution of Luxembourg contains no specific provision condemning either discrimination on grounds of race or xenophobia, it proclaims equality among Luxemburgers (art. 11) a principle which it extends, except in those cases stipulated by law, to aliens on the territory of the Grand Duchy (art. 111). In May 1989 both articles were declared open to review by the Chamber of Deputies in order to extend (on equal terms) the guarantee of fundamental rights to aliens as well as to nationals.

11. In addition to the principal international instruments, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms, mention should be made of the Act of 1 December 1977 whereby the International Convention on the Elimination of All Forms of Racial Discrimination, signed on 7 March 1966 in New York was approved, and the Act of 9 August 1980 adopted pursuant to the Convention, which completed the Penal Code by the addition of articles 454 and 455.

12. Under the Act of 8 August 1985 for the prevention of genocide persons committing genocide, aiding or abetting the commission of genocide or conspiring to commit genocide, are liable to penalty.

13. To complete the picture, the following should be mentioned by way of illustration:

The approval, by an Act dated 31 July 1987, and the ratification, dated 29 September 1987, of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 10 December 1984;

The approval, by an Act dated 22 June 1988, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, signed at Strasbourg on 26 November 1987;

The approval, by an Act dated 15 December 1988, and the ratification, dated 2 February 1989, of the Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the United Nations General Assembly on 18 December 1979;

The approval, by an Act dated 27 February 1989, of Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, done in Strasbourg on 22 November 1984;

The approval, by an Act dated 4 December 1991, of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, adopted by the United Nations General Assembly on 15 December 1989.

14. In order to facilitate the full integration of aliens in Luxembourg, Parliament has adopted several measures to make it easier to acquire Luxembourg nationality. For example, the Act of 11 December 1986 established that nationality could be passed on by either parent on equal terms and eased the age and residence requirement for the acquisition of Luxembourg nationality.

15. In recent years, action by the Government has principally focused on two particularly sensitive areas, i.e. education and the consultation of aliens (at the national and local levels).

16. Considerable efforts have been made over many years in the field of education. Luxembourg currently has to deal with a school population 40 per cent of whom are aliens, a veritable challenge. The Government has given priority to two areas, language learning and the reduction of the size of classes.

17. As regards the composition and organization of classes, for which the communes are responsible, it should be noted that there are no quotas and virtually all classes include pupils of foreign and of Luxembourg nationality. In some classes most pupils are foreign. To improve performance, the size of classes has been reduced to 15-16, thus allowing teachers, for whom specialized training courses are available, to give their pupils greater attention.

18. In addition, in view of the difficulties experienced by some foreign pupils, the first two school years may be spread over three years in order to allow pupils to take language courses in language laboratories.

19. As part of the reform of secondary education, the Act of 16 November 1988 makes provision for moral and social training alongside religious instruction. The Grand Duchy Regulations of 27 February 1989 deal with the composition and functioning of the National Council on Moral and Social Training. The National Council represents the whole spectrum of opinion and its members are

required to possess particular competence in the field of human rights and social solidarity. The Council draws up its programme, which naturally addresses the problems of racism and xenophobia.

20. Article 176 of the Communal Act of 13 December 1988 modified the Act of 24 July 1972 concerning social welfare activities for immigrants, to which it added the following article 7 bis:

> "Article 7 bis: In communes in which over 20 per cent of the population are aliens, the communal council shall set up a special consultative commission responsible for the interests of residents of foreign nationality at the communal level. Luxembourg and foreign residents shall sit on the commission.
>
> The organization and functioning of the commissions are fixed by Grand-Duchy Regulations."

21. This regulation was adopted on 5 August 1989. Bill No. 3649 concerning the integration of aliens in the Grand-Duchy of Luxembourg and social welfare for aliens is currently before the Chamber of Deputies.

22. This text originates in the 1989 Government programme and provides an effective tool that will enable the Government to develop a policy for the integration of the foreign population that respects social and cultural identities.

23. The guidelines for the project may be summarized as follows:

(1) Coordination of policy towards aliens;

(2) Improvement of channels of consultation for aliens;

(3) Reorganization of policy in respect of hostels and reception centres;

(4) Development of training, information and cross-cultural exchanges;

(5) Support for private initiative and associative activities among aliens;

(6) Reorganization of the Immigration Service.

Part II

Information on articles 2 to 7

Article 2

24. An important touchstone of Luxembourg Government policy is undoubtedly its desire to integrate aliens, as the best weapon against all forms of xenophobia. In this connection, the Government programme presented on 24 July 1989 by Mr. Jacques Santer, Prime Minister, Minister of State, to the Chamber of Deputies stated:

> "The Government is committed to fighting all forms of xenophobia and believes that the solution calls for a deliberate policy of integration that respects social and cultural identities" and that "together with communal and private organizations, the Government will develop social and educational measures to facilitate the process of integration and multicultural exchanges".

25. Condemnation of racial discrimination and the desire for a better policy of social integration of aliens is an essential concern of Government policy that appears regularly in proposals put forward by the Luxembourg authorities.

26. As an illustration of this determination, reference may be made to a motion concerning racist movements adopted by the Chamber of Deputies at its public meeting of 30 November 1991. The motion reads as follows:

> "The Chamber of Deputies,
>
> Considering that racist and extreme right-wing movements are currently gaining ground in several European countries;
>
> Considering that recent events in the Grand-Duchy show that Luxembourg is not immune from this dangerous scourge;
>
> Considering that it is the duty of every responsible citizen who respects human rights, firmly and unreservedly to condemn such trends which imperil the very foundations of our democracy;
>
> Considering that the activities of a small minority against Luxembourg citizens or aliens, whatever their origin, race or religion cannot be tolerated,
>
> Invites the Government to take the preventive and punitive measures necessary to nip in the bud such movements, to which no tolerance should be shown."

27. The executive branch reacted to this motion by publishing the following statement:

"The Government has taken note of occasional nationalist and racist activities in the Grand-Duchy.

These activities have been the subject of wild rumours which investigations have shown to be false.

The Government calls on persons with knowledge of specific facts to report them to the competent authorities.

The Government is resolutely determined to take energetic action against any disturbances of public order by racist or xenophobic movements. The police and the prosecution departments are responsible for taking the action necessary to prevent and effectively combat racist or xenophobic acts and violence.

For over a century Luxembourg's identity has been consolidated by its capacity to integrate. Aliens continue to make an overwhelming contribution to our country's economic development, well-being and culture.

Multinationalism is a major asset which should be preserved.

The Government of Luxembourg will not tolerate the slightest attack upon the deep sense of solidarity characteristic of Luxembourg society."

28. On 2 February 1993, the Chamber of Deputies adopted a further motion on the problem. The relevant extracts are:

"Condemning all acts of xenophobic and racist propaganda and violence in Europe;

"The Chamber of Deputies calls on the Government:

...

to support the struggle against racism and xenophobia and the harmonization, at the European level, of the right of asylum in the spirit of an open and tolerant Community ..."

29. Government action to prevent xenophobia centres on immigration policy.

30. A broad array of measures is being implemented. Some examples are cited below:

(a) Information

31. To meet the needs of foreign residents, a multilingual information programme has been implemented by the Ministry of the Family and others to inform immigrants of their rights and of the resources available to them. In the social and economic field, many benefits are available to immigrants without any residence requirements (in particular, housing aid, which may

exceed 1 million Luxembourg francs). For many years there have been weekly radio broadcasts in Portuguese and Italian. Since 1990, there have been daily broadcasts in Portuguese.

32. In addition to the information programme for immigrants, an information campaign has been launched for Luxemburgers. In this connection, it should be mentioned that Luxemburgers understand several languages and read many newspapers, including foreign ones, and are thus open-minded about the outside world.

33. In autumn 1992, the Government of Luxembourg decided to grant 2.5 million francs to the International League against Racism and Anti-Semitism, a non-profit organization, to enable it to carry out a large-scale advertizing campaign against intolerance, racism and xenophobia and calling on Luxemburgers to show understanding and respect for their fellows.

(b) The provision of assistance and services

34. In this field, immigrants may apply without charge or formality to the Immigration Service of the Ministry of the Family, which gives them assistance and support in finding solutions to their problems. In addition, various types of service are provided for immigrants. In accordance with the principle of subsidiarity, the State enters into agreements with associations, in particular immigrants' associations.

(c) Promotion of sociocultural activities

35. A service to promote sociocultural activities (ASTI) is run under contract with the Ministry of the Family as a means of promoting and investing in human relations by breaking down prejudices and barriers between communities.

(d) Education

36. With regard to the incorporation of mother tongues in school timetables, the following features are noteworthy:

Continuing teacher training in foreign languages and cultures;

Instruction in the Luxembourg language for adults.

(e) Consultation of aliens

37. This is a major problem. In response to the claims of associations for the right to vote, the Government has chosen the path of consultation. Consultative bodies have been established to permit the discussion of all problems that arise within and between the various communities with a view to reaching a consensus on major issues.

38. There are two bodies:

At the national level, the National Immigration Council,

At the local levels, the Communal Consultative Commissions.

Consultative arrangements will be further developed by Bill No. 3649 now before the Chamber of Deputies.

Article 3

39. In view of the major strides made in efforts to abolish apartheid in South Africa, the Grand Duchy of Luxembourg has not taken any legislative, judicial or administrative measures in recent years to implement the provisions of article 3 of the Convention.

40. The only specific measures worth mentioning in this respect are those undertaken at the Community level.

Article 4

41. Articles 454 and 455 of the Penal Code, brought into force by the Act of 9 August 1980, implement the provisions of article 4 of the Convention. They are as follows:

Article 454

(1) Any person providing goods or performing services who refuses to offer the goods or services

(a) to a person on the ground of his or her race, colour, descent or ethnic or national origin;

(b) to a group or community on the ground of the race, colour, descent or ethnic or national origin of its members or some of its members;

(2) Any person procuring or offering to procure goods or services who practises discrimination against

(a) a person on the ground of his or her race, colour, descent or ethnic or national origin;

(b) a group or community on the ground of the race, colour, descent or ethnic or national origin of its members or some of its members;

(3) Any person who publicizes his or her intention of refusing to offer goods or services in the cases referred to in paragraph 1 or of practising discrimination as described in paragraph 2 of this article shall be liable to a term of imprisonment of from eight days to six months and to a fine of from 2,501 to 100,000 francs or to one of these penalties.

Article 455

(1) Any person who, by words addressed to the public or spoken in public, in writing, in print, pictures or emblems of any kind, published, posted, distributed, sold, placed on sale or displayed in public view, incites people to the acts referred to in article 454, to hatred or violence vis-à-vis a person, group or community on the ground of the race, colour, descent or ethnic or national origin of that person or the members or some of the members of the group or the community.

(2) Any person who belongs to an organization whose objectives or activities are such as to commit any of the acts referred to in paragraph 1 of this article

shall be liable to a term of imprisonment of from eight days to six months and a fine of from 2,501 to 100,000 francs or to one of these penalties.

42. There are few instances of the application of these punitive provisions and no important decisions on this subject in Luxembourg case law.

Articles 5 to 7

43. Some provisions of the Grand Duchy Regulations of 24 March 1989 concerning the administration and internal regime of penal establishments are designed to guarantee the equal treatment of foreign and Luxembourg detainees, to ensure respect for human dignity and to prohibit any form of discrimination among detainees.

44. Article 16 stipulates that:

"The administration shall ensure respect for the dignity of the human person with regard to all persons in its charge for any reason whatsoever, and shall take all the measures necessary to facilitate their reintegration in society within the framework of the minimum rules for the treatment of prisoners."

45. Article 178 stipulates:

"All detainees are subject to the rules that uniformly apply to prisoners of the category to which they belong.

"Depending on their merits and aptitudes, convicted offenders are equally entitled to benefit from the various advantages or if appropriate, from the progressive regime in force in the establishment.

"There shall be no differential treatment based on prejudices regarding race, colour, sex, language, religion, political or other opinion, national or social origin, wealth, birth or any other consideration.

"The religious beliefs and moral precepts of the group to which prisoners belong shall be respected."

46. Article 235 stipulates:

"Prisoners of foreign nationality may freely communicate with the diplomatic and consular representatives of their countries in the individual visiting room during visiting times, without the presence of a warder, even if they have been deprived of visiting rights as punishment, save when an order prohibiting visits has been made by the examining magistrate.

"Prisoners from a State with no diplomatic or consular agent in the country and detained political refugees may be visited, under the same conditions, by a representative of any other national or international authority whose task it is to protect them."

47. Freedom of religion and public worship and freedom to express religious beliefs are enshrined in article 19 of the Constitution as well as in articles 142, 143, 144 and 151 of the Penal Code:

"Article 142:

Anyone who by means of violence or threat compels or prevents one or several persons from worshipping, from attending worship or from celebrating particular religious festivals, from observing particular days of rest and in that connection, from opening or closing their workshops, places of trade or shops or compels anyone to perform or abandon certain activities shall be sentenced to between eight days' and two months' imprisonment and to a fine of from 2,501 to 20,000 francs.

Article 143

Any person who by causing a disturbance or disorder prevents, delays or interrupts a religious ceremony in premises intended or customarily used for worship or any public religious ceremonies, shall be sentenced to between eight days' and three months' imprisonment and to a fine of from 2,501 francs to 50,000 francs.

Article 144

Anyone who by act, word, gesture, threat, writing or drawing desecrates any objects of worship either on premises intended or habitually used for worship, or in public ceremonies, shall be sentenced to between 15 days' and 6 months' imprisonment and to a fine of from 2,501 francs to 50,000 francs.

Article 151

Any arbitrary act in violation of the freedoms and rights guaranteed by the Constitution ordered or carried out by an official or public agent, by a person holding authority or by an agent of the authority or the police shall be punished by between 15 days' and 1 year's imprisonment."

48. The right of aliens to settle in Luxembourg is guaranteed by the Act of 28 December 1988. That Act regulates entry to crafts, trades and industrial employment as well as to certain liberal professions. It amends article 4 of the Act of 2 July 1935 which lays down regulations for the acquisition of craft and trade certificates of qualification.

The relevant sections are as follows:

Article 20

"Nationals of member States of the European Economic Community, not resident in Luxembourg, who occasionally visit Luxembourg for short periods to take orders or provide services connected with commercial and liberal professions shall not require administrative authorization from the Luxembourg authorities, without prejudice to Council directives concerning freedom to perform services connected with non-salaried activities of the professions covered by these provisions.

Craftsmen and industrial employees are required to provide proof to the minister responsible for residence permits that they are legally authorized to exercise their craft or trade in their country of residence, without prejudice to the Council directives concerning freedom to perform services connected with certain non-salaried industrial and craft activities. An ad hoc certificate will be issued by the minister."

Article 21

"Aliens who are nationals of non-member countries of the European Economic Community, stateless persons and persons of undetermined nationality who, although not resident in Luxembourg, occasionally visit Luxembourg for short periods to take orders or perform services connected with the occupations covered by this Act continue to require the authorization provided for in Article 1 of this Act.

Nevertheless, Grand-Duchy regulations may place nationals of specified third-party States on the same footing as citizens of member States of the European Economic Community."

49. The Government is considering the possibility of further expanding the institutional arrangements allowing aliens to take an active part in Luxembourg's public life and politics. The Government is examining the possibility of extending the right to vote in elections for professional bodies to aliens from member countries of the European Community.

50. Moreover, the Treaty of Maastricht provides for the extension of voting rights and of the right to be elected both in municipal and European elections to citizens of the Union who reside in a member State of the European Union of which they are not nationals. The manner in which this right may be exercised has yet to be determined and provision may be made for exceptions if they are justified by problems specific to a member State.